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9 | Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

RANDALL MCCOWN,

CASE NO. 2:20-cv-00603-RFB-BNW

Plaintiffs.

v.

C. R. BARD, INC.; BARD PERIPHERAL
VASCULAR, INCORPORATED.

**STIPULATION AND ORDER TO STAY
DISCOVERY AND ALL PRETRIAL
DEADLINES
(FIRST REQUEST)**

Defendants.

Plaintiff Randall McCown (“Plaintiff”) and Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (“Defendants” and collectively with Plaintiff, the “Parties”), pursuant to Fed. R. Civ. P. 26(c) and (d) and LR IA 6-1, respectfully request that this Court temporarily stay discovery and all pretrial deadlines, as set forth in the Discovery Plan (Dkt. 24), until **June 10, 2021** while the Parties finalize settlement. In support thereof, the Parties state as follows:

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1 1. This case was part of the Multi-District Litigation proceeding *In re: Bard IVC Filters*
2 *Product Liability Litigation*, pending before Senior Judge David Campbell of the District of
3 Arizona.

4 2. Plaintiff alleges experiencing complications following the implantation of a Bard
5 Inferior Vena Cava (“IVC”) filter, a prescription medical device. He has asserted three strict products
6 liability counts (manufacturing defect, information defect (failure to warn) and design defect), six
7 negligence counts (design, manufacture, failure to recall/retrofit, failure to warn, negligent
8 misrepresentation and negligence per se), two breach of warranty counts (express and implied), two
9 counts sounding in fraud (fraudulent misrepresentation and fraudulent concealment), and a claim for
10 punitive damages.

11 3. Defendants deny Plaintiff’s allegations.

12 4. After four years, the completion of general issue discovery, and the conduct of three
13 bellwether trials, Judge Campbell ordered that cases, which were not settled or were not close to
14 settling, be transferred or remanded to the appropriate jurisdictions around the country for case-
15 specific discovery and trial. As a part of that process, he established a “track” system, wherein certain
16 cases were placed on tracks either to finalize settlement paperwork, continue settlement negotiations,
17 or be remanded or transferred.

18 5. This case was transferred to this Court on March 30, 2020 because at the time it was
19 not close to settling. But, since that date, the Parties have engaged in further settlement discussions
20 and have reached a global settlement in principle of this and other cases involving Bard Inferior Vena
21 Cava filters that have been filed across the nation, and a settlement agreement is in place. The Parties
22 have been working diligently and in good faith to finalize all terms and payments pursuant to that
23 settlement.

24 6. The Parties report that they continue to work diligently toward finalizing the
25 settlement by working to obtain releases and resolve liens, but due to complexity and volume, they
26 anticipate that completion of the settlement process will take approximately 90 days. Accordingly,
27 the Parties request a 90-day extension of the stay in this matter.

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1 7. The Parties are waiting on final paperwork from this Plaintiff and many others, to
 2 complete the settlement process.

3 8. Neither party will be prejudiced by this extension and this will prevent unnecessary
 4 expenditures of the Parties and of judicial resources.

5 9. Accordingly, the Parties request that this Court issue an order staying discovery and
 6 pretrial deadlines until **June 10, 2021** to allow the Parties time to finalize settlement. This will
 7 prevent unnecessary expenditures of the Parties and judicial resources as well as place this case on a
 8 similar “track” as the MDL cases Judge Campbell determined should continue settlement dialogue.

9 10. A district court has broad discretion over pretrial discovery rulings. *Crawford-El v.*
 10 *Britton*, 523 U.S. 574, 598 (1998); *accord Republic of Ecuador v. Hinchee*, 741 F.3d 1185, 1188-89
 11 (11th Cir. 2013); *Thermal Design, Inc. v. Am. Soc'y of Heating, Refrigerating & Air-Conditioning*
 12 *Eng'rs, Inc.*, 755 F.3d 832, 837 (7th Cir. 2014); *see also Cook v. Kartridg Pak Co.*, 840 F.2d 602,
 13 604 (8th Cir. 1988) (“A district court must be free to use and control pretrial procedure in furtherance
 14 of the orderly administration of justice.”).

15 11. Under Federal Rules of Civil Procedure 26(c) and 26(d), a court may limit the scope
 16 of discovery or control its sequence. *Britton*, 523 U.S. at 598. Although settlement negotiations do
 17 not automatically excuse a party from its discovery obligations, the parties can seek a stay prior to
 18 the cutoff date. *Sofo v. Pan-Am. Life Ins. Co.*, 13 F.3d 239, 242 (7th Cir. 1994); *see also Wichita*
 19 *Falls Office Assocs. v. Banc One Corp.*, 978 F.2d 915, 918 (5th Cir. 1993) (finding that a “trial
 20 judge’s decision to curtail discovery is granted great deference,” and noting that the discovery had
 21 been pushed back a number of times because of pending settlement negotiations).

22 12. Facilitating the efforts of parties to resolve their disputes weighs in favor of granting
 23 a stay. In *Coker v. Dowd*, 2:13-cv-0994-JCM-NJK, 2013 U.S. Dist. LEXIS 201845, at *2-3 (D. Nev.
 24 July 8, 2013), the parties requested a 60-day stay to facilitate ongoing settlement negotiations and
 25 permit them to mediate global settlement. The Court granted the stay, finding the parties would be
 26 prejudiced if required to move forward with discovery at that time and a stay would potentially
 27 prevent an unnecessary complication in the case. *Id.* at *3. Here, the Parties have reached a
 28 settlement in principle.

1 13. The Parties agree that the relief sought herein is necessary to handle the case in the
2 most economical fashion and to ensure that the Court's time and resources are not expended on a
3 matter that may not remain on its docket, yet will allow sufficient time to finalize settlement in this
4 matter.

5 **WHEREFORE**, Plaintiff and Defendants respectfully request the Court's approval of this
6 stipulation to stay discovery and all pretrial deadlines until **June 10, 2021** to allow the Parties to
7 finalize settlement.

8 **IT IS SO STIPULATED.**

9 Dated this 2nd day of March 2021.

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12 A LAW CORPORATION

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8 *Counsel for Defendants*

9 **IT IS SO ORDERED.**

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RICHARD E. BOULWARE, II
United States District Court

DATED this 12th day of March, 2021.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on **March 2, 2021**, I caused the foregoing document to be electronically
3 filed with the Clerk of the Court using the CM/ECF system, which will send notification of such
4 filing to the CM/ECF participants registered to receive such service.

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7 */s/ Shermiel Lynn Irasga*
8 An employee of GREENBERG TRAURIG, LLP

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